IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6247 of 1997

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALABHAI KHODABHAI MAKWANA & 11 - Petitioner(s)
Versus
DIRECTOR OF MUNICIPALITIES & 2 - Respondent(s)

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Appearance :
MR YOGESH S LAKHANI for Petitioner(s) : 1 - 12.
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/03/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the respective petitioners have prayed for an appropriate writ, direction and/or order quashing and setting

aside the order passed by the respondent No.2 – Collector, Banaskantha dated 12th September, 1994 (Annexure – B) and the order dated 14th July, 1997 (Annexure – D).

2. It is the case of the petitioners that all the petitioners were initially appointed as Daily Wagers in the Water Works Department of Radhanpur Municipal Borough and at the relevant time, the respondent No.3 was a Nagar Panchayat. That vide General Board Resolution No. 81 dated 30th March, 1994 it was resolved that all the petitioners, who were working in the Water Works Department as Daily Wagers, were required to be made permanent and that they were required to be taken on the pay scale. That the Collector, Banaskantha took the said resolution under review in exercise of powers under Section 258 of the Gujarat Municipalities Act and by order dated 12th September, 1994 stayed the resolution No. 81 dated 30th March, 1994 permanently and directed the Nagar Panchayat to restore the position prevailing prior to the resolution

dated 30th March, 1994. That the said order was passed in respect of all such resolutions including the resolution No.81. That as the said order was passed without giving an opportunity to the petitioners and other affected employees, the petitioners preferred Special Civil Application No. 11023 of 1994. The other employees also preferred other Special Civil Applications and all these aforesaid Special Civil Applications came to be allowed / disposed of vide judgment and order dated 17th June, 1995 as the order passed by the Collector, Banaskantha dated 12th September, 1994 in breach of principle of natural justice and remanded the matters to the Collector, Banaskantha and the Collector, Banaskantha was directed to pass an appropriate order in accordance with law after giving an opportunity to the petitioners. That thereafter, after giving an opportunity to the petitioners, the Collector, Banaskantha has passed the impugned order dated 14th July, 1997 by which the resolution No. 81 dated 30th March, 1994 came to be permanently stayed by the

Collector, Banaskantha in exercise of powers under Section 258 of the Gujarat Municipalities Act and further passed an order to restore the position prevailing prior to the resolution dated 30th March, 1994. Being aggrieved and dissatisfied with the impugned order passed by the Collector, Banaskantha dated 14th July, 1997, the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. The main contention on behalf of the petitioners was that once the resolution is implemented, the Collector has no jurisdiction to take the resolution under suo-motu review / revision under Section 258 of the Gujarat Municipalities Act. It was submitted that identical petition raising the similar controversy was referred to the Larger Bench being Special Civil Application No. 9520 of 1995 and therefore, this Court while admitting the present Special Civil Application, passed an order directing the Registry to place this petition for final hearing after the Larger

Bench finally disposes of the Special Civil Application No. 9520 of 1995 which is referred to the Larger Bench.

4. Shri Dipen Desai, learned AGP has submitted that subsequently the aforesaid Special Civil Application No. 9520 of 1995 which was referred to the Larger Bench is disposed of and it is held by the Larger Bench that even if the resolution is implemented, in that case also, the Collector would have jurisdiction to exercise powers under Section 258 of the Gujarat Municipalities Act. He has submitted that the said decision is reported in ***1998 (1) GLH 519***.

5. Considering the decision of the Full Bench of this Court in case of ***Parshottambhai G. Chavda V/s. State of Gujarat*** reported in ***1998 (1) GLH 519*** and another decision of the learned Single Judge of this Court in case of ***Rajeshbhai Thakorbhai Bhatt V/s. Director of Municipalities*** reported in ***(2005) 9 GLJ 487,*** it cannot be said that once the resolution is implemented, the

Collector has no jurisdiction to exercise the power under Section 258 of the Gujarat Municipalities Act. No other submission has been made. Ever otherwise, on merits also, in view of the fact that the resolution passed by the Nagar Palika was ex-facie illegal and appointments were made on permanent basis in anticipation of sanctioning over of the post by the Central Government and thereafter no efforts were made to get the post sanctioned and the regular appointments were made de-hors the sanctioned post, the Collector, Banaskantha has rightly quashed and set aside the said resolution.

6. For the reasons stated above, the petition fails. Rule is discharged, however, there shall be no order as to costs.

[M.R.Shah, J.]

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